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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 December 1992, at 10 a.m.

Chairman: Mr. ALSTON

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Report of the Committee to the Economic and Social Council

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The meeting was called to order at 10.35 a.m.

REPORT OF THE COMMITTEE TO THE ECONOMIC AND SOCIAL COUNCIL (agenda item 10) E/C.12/1992/CRP.1 and Add.1-4; E/C.12/1992/WP.14 and 19).

E/C.12/1992/CRP.1

1. The CHAIRMAN said that he would not go through the document paragraph by paragraph. Amendments would be made to paragraph 15 concerning two other reports by New Zealand. An asterisk would be placed next to each of those reports with a statement to the effect that they had been rescheduled for consideration at the ninth session; in that regard, the Committee would draw attention to its principle relating to reports, consideration of which was overdue.

2. Mr. SIMMA observed that in paragraph 15 mention was made of Germany under the second heading which read "concerning articles 1 to 15" whereas it belonged under the third heading concerning articles 13 to 15.

3. The CHAIRMAN explained that a number of minor corrections would be made to the document: the heading mentioned by Mr. Simma should read "articles 13 to 15" and the following heading should read "articles 1 to 15" because those reports were comprehensive. In addition, Mexico would be deleted from the list of countries in the paragraph and four countries, Belgium, Kenya, Lebanon and Surinam, would be included for consideration in the absence of any report.

4. Mr. NENEMAN said that a change was also needed in paragraph 4, which stated that Mr. Alvarez Vita had attended part of the session.

5. Mrs. JIMENEZ BUTRAGUEÑO pointed out that in the Spanish text the first paragraph stated that only 18 States had ratified or acceded to the Covenant as at 11 December 1992.

6. The CHAIRMAN said that the Spanish text should read 118, as did the English text.

7. Mr. SPARSIS called attention to paragraph 5 of the document which read "The following specialized agencies were represented by observers: ILO, UNESCO and WHO". In fact only WHO had been represented.

8. Ms. PINET (World Health Organization) said that it was important that the specialized agencies should have more time to devote to cooperation with United Nations human rights bodies.

9. The CHAIRMAN agreed; the problem was how to bring that about. The Committee could decide in future to specify the number of meetings attended by each agency.

10. Mrs. JIMENEZ BUTRAGUEÑO said that since WHO was the only specialized agency that had really been represented, it should at least be listed first and not last in the report.

11. The CHAIRMAN said that it would look strange not to use alphabetical order without offering any explanation of the reason for doing so. Alternatively, a sentence could be drafted in the report saying that, with the exception of WHO, the attendance of representatives of specialized agencies was sporadic at best, and that the Committee regretted that situation because it considered the involvement of the specialized agencies in its work to be of major importance. That observation would not appear in document E/C.12/1992/CRP.1 but later on, in the review of the Committee's work. He would submit a draft comment at the appropriate time.

12. Document E/C.12/1992/CRP.1, as amended, was adopted.

E/C.12/1992/CRP.1/Add.1

Paragraphs 1-7

13. Paragraphs 1-7 were adopted.

Paragraph 8

14. Mrs. JIMENEZ BUTRAGUEÑO said that since she had a special interest in the elderly she felt that the word corresponding to "adults" in the Spanish text was not sufficient and that the Spanish text should contain a reference to ancianos or old people in particular.

15. The CHAIRMAN suggested the text formulation "adults, including the elderly".

16. Mrs. JIMENEZ BUTRAGUEÑO and Mr. MRATCHKOV endorsed the Chairman's suggestion.

17. Paragraph 8, as amended, was adopted.

Paragraph 9

18. Mr. SPARSIS pointed out that for the sake of consistency the word "establishments" in the second line of paragraph 9 should be replaced by the word "institutions".

19. Mr. KOUZNETSOV said that the word in the Russian text corresponding to the word "maintenance" in the second sentence in paragraph 9 was not very satisfactory and that the translation would have to be made more specific. His remarks referred only to the Russian text.

20. Paragraph 9, as amended, was adopted.

Paragraph 10

21. Mr. SIMMA said that when drafting the concluding observations on Belarus he had included a reference to the introduction of fees for tenth and eleventh grade education. He suggested that the statement in question should be included in the paragraph.

22. Mr. KOUZNETSOV recalled that the representative of Belarus had said that the Government intended to introduce fees for higher study and that it was not an accomplished fact.

23. Mr. SIMMA said that Mr. Kouznetsov was correct. The relevant passage in the concluding observations read "the Committee notes with particular concern the intention of the Government of Belarus to introduce fees for education in the tenth and eleventh grades". He suggested the insertion after the words "expenditure on education" of the sentence "They therefore had the intention to introduce fees for education in the tenth and eleventh grades.".

24. Paragraph 10, as amended, was adopted.

Paragraph 11

25. Mr. SPARSIS proposed that in the penultimate line of the paragraph the term "equivalent employee" should be amended to read "comparable employee".

26. Paragraph 11, as amended, was adopted.

Paragraphs 12-18

27. Paragraphs 12-18 were adopted.

28. Document E/C.12/1992/CRP.1/Add.1, as amended, was adopted.

29. The CHAIRMAN noted that the text of the concluding observations on Belarus which had been adopted at an earlier meeting by the Committee would be included in the final report.

E/C.12/1992/CRP.1/Add.2

Paragraph 1

30. The CHAIRMAN said that a reference to 4 December 1992 would be added to paragraph 1.

31. Paragraph 1, as amended, was adopted.

Paragraphs 2-4

32. Paragraphs 2-4 were adopted.

Paragraph 5

33. Mr. SIMMA pointed out that the last sentence of the paragraph stated that the Polish Charter of Rights and Freedoms provided that all citizens "could seize any of the international human rights bodies established under treaties", whereas many human rights bodies could not be seized by individuals.

34. The CHAIRMAN suggested that the phrase should be amended to read: "could, where appropriate, submit communications to relevant human rights bodies".

35. Paragraph 5, as amended, was adopted.

Paragraphs 6-8

36. Paragraphs 6-8 were adopted.

Paragraph 9

37. Mrs. BONOAN-DANDAN pointed out that since the Polish delegation had included one woman, who had given some of the replies, in paragraph 9 and elsewhere, as appropriate, the pronoun "his" should be deleted.

38. Mr. SPARSIS asked whether there was a difference between the word "bill" used in paragraph 9 and the word "act" used in paragraph 11.

39. The CHAIRMAN said that once a bill was adopted it became an act; therefore the word "bill" in the second line of paragraph 9 should be amended to read "act".

40. Paragraph 9, as amended, was adopted.

Paragraphs 10-17

41. Paragraphs 10-17 were adopted.

Paragraph 18

42. Mrs. BONOAN-DANDAN said that, to make the ultimate destination of participants in the brain drain clear, the word "there" should be added after "stay".

43. Paragraph 18, as amended, was adopted.

44. The CHAIRMAN noted that the text of the concluding observations had been adopted by the Committee at an earlier meeting and would be included in the final report.

45. Document E/C.12/1992/CRP.1/Add.2, as amended, was adopted.

E/C.12/1992/CRP.1/Add.3

Paragraphs 1-2

46. Paragraphs 1-2 were adopted.

Paragraph 3

47. Mr. SPARSIS said that, to be consistent with the wording in earlier parts of the report, the word "establishment" should be replaced by "institution",

an editorial correction that ought also to be applied throughout the report in references to education.

48. It was so decided.

49. Paragraph 3, as amended, was adopted.

Paragraphs 4-9

50. Paragraphs 4-9 were adopted.

Paragraph 10

51. Mrs. JIMENEZ BUTRAGUEÑO said that although the word "gender" was correct English usage it should be rendered by sexo in Spanish.

52. Paragraph 10, as amended, was adopted.

Paragraphs 11-16

53. Paragraphs 1-16, as amended, were adopted.

Paragraph 17

54. Mr. SPARSIS suggested that the words "other forms of" should be deleted from the fifth sentence.

55. Paragraph 17, as amended, was adopted.

Paragraph 18

56. Mr. SIMMA proposed that the words "countries other than those of the European Community" in the last sentence should be replaced by "non-European countries".

57. Paragraph 18, as amended, was adopted.

Paragraphs 19-23

58. Paragraphs 19-23 were adopted.

Paragraphs 24-28

59. The CHAIRMAN noted that paragraphs 24-28 contained the concluding observations of the Committee, the text of which had been adopted at an earlier meeting.

60. Mrs. JIMENEZ BUTRAGUEÑO proposed that the words "did not meet the guidelines" should be replaced by "were at variance with the guidelines".

61. It was so agreed.

62. Document E/C.12/1992/CRP.1/Add.3, as amended, was adopted.

E/C.12/1992/CRP.1/Add.4

Paragraphs 1-3

63. Paragraphs 1-3 were adopted.

Paragraph 4

64. Mr. FOFANA said that in the French text tribunal constitutionnel should be replaced by conseil constitutionnel, since that was the term for the institution generally used in French-speaking countries.

65. Mrs. JIMENEZ BUTRAGUEÑO said that, as in other Spanish-speaking countries, the term in use in her country for the body issuing rulings on the conformity of laws with the Constitution was the Tribunal constitucional. The text therefore ought not to be amended in Spanish.

66. Mr. WIMER ZAMBRANO said that since "council" was the expression used to describe the institution concerned in most countries throughout the world it would be preferable.

67. Mr. MRATCHKOV said the problem was not one of language but of function. A council operated in a different manner to a court or tribunal. In the French text, either cours or tribunal would be acceptable; it was important, however, that whichever term was used should be consistent with the general usage elsewhere in the Committee's texts.

68. The CHAIRMAN said that the term appearing in the text ought to refer to the institution in place in the country concerned. Since the Hungarian delegation had used the English term "Constitutional Court" he suggested that it should remain as such in the English text with appropriate renderings in the other languages.

69. Mr. MUTERAHEJURU endorsed that opinion.

70. Paragraph 4, as amended, was adopted.

Paragraphs 5-12

70. Paragraphs 5-12 were adopted.

Paragraph 13

72. Mr. SIMMA proposed that the word "additional" should be deleted from the fifth sentence.

73. The CHAIRMAN, observing that the word "natural" implied that disadvantages were the unavoidable lot of minorities, suggested that the whole phrase should be amended to read "to compensate for disadvantages which usually flow from being a member of a minority group by advantages in terms of".

74. Paragraph 13, as amended, was adopted.

Paragraph 14

75. Paragraph 14 was adopted.

Paragraph 15

76. Mrs. JIMENEZ BUTRAGUEÑO proposed that the final phrase should be amended to read "to facilitate access to and participation in culture by elderly persons".

77. Paragraph 15, as amended, was adopted.

Paragraph 16

78. Paragraph 16 was adopted.

Paragraph 17

79. Mr. SPARSIS said he was unclear as to the exact meaning of the term "risk participation".

80. The CHAIRMAN said he assumed it meant that the researchers themselves shared a part of the risk involved in the project and would thus have a share in the profits.

81. Mrs. JIMENEZ BUTRAGUEÑO proposed the term be replaced by "joint participation" which would imply both risks and profits.

82. Mrs. BONOAN-DANDAN said that possible replacement terms might be "counterpart funding" or "contracts with institutional participation".

83. Mr. KONATE said his impression from exchanges with the Hungarian representative was that the purpose of the new research contracts was to ensure the sharing of any profits that might result. It was important to express the precise meaning intended by the Hungarian delegation.

84. Mr. SIMMA, endorsing that last opinion, said that the report should use the actual words of the Hungarian representative as recorded in the summary record of the meeting concerned.

85. The CHAIRMAN said that since the relevant record (E/C.12/1992/SR.9, para. 7) he made reference only to risk participation without any mention of profits, he would suggest that the term "risk participation" should be retained but placed in inverted commas.

86. It was so decided.

87. Mr. SPARSIS said the penultimate sentence was unclear.

88. The CHAIRMAN said it would be within the Committee's competence to amend the text to clarify the meaning of the Hungarian representative's statement.

89. Mr. NENEMAN said that would best be achieved by amending the last part of the sentence to read simply "the brain drain would involve not only disadvantages but also advantages for Hungary".

90. Paragraph 17, as amended, was adopted.

91. Document E/C.12/1992/CRP.1/Add.4, as amended, was adopted.

E/C.12/1992/WP.19

92. The CHAIRMAN noted that the headings used for the five sections of the working paper followed the format employed by the Human Rights Committee, the Committee on the Rights of the Child and, to a large degree, the Committee on the Elimination of Racial Discrimination.

93. Mr. MARCHAN ROMERO said that it was the first time that he had seen that format, and he was in favour of adopting it. He noted that it had not been used in the case of Norway. The Committee should be consistent in the layout of its reports.

94. Mr. SIMMA said that as the format used for Hungary was different, the Committee should submit the concluding observations without the headings, while retaining the substance, so that the difference would not be so striking. It could then adopt the format with the headings for 1993.

95. The CHAIRMAN agreed and thought that that would respond to Mr. Marchan Romero's concern.

Paragraph 1

96. Mrs. JIMENEZ BUTRAGUEÑO said that she considered that the Committee should not express its appreciation for the written report. Instead, it should be more specific in expressing its appreciation for a particular response.

97. The CHAIRMAN said that that sentence had appeared for three reasons: firstly, it was the standard phrase used by other committees; secondly, the Committee would be considering situations in which no report had been submitted at all; and thirdly, the Committee was expressing appreciation for the written report, not just taking note of the fact that it had been presented. There would be other occasions in the future when the Committee would criticize a report.

98. Paragraph 1 was adopted.

Paragraph 2

99. Mr. SIMMA said that the working paper had been prepared on the basis of the French text, and that the translation of the words "Ecole supérieure d'administration" in paragraph 2 had subsequently been made available: "National School of Administration".

100. Mr. SPARSIS wondered whether the words "the special education programmes put in place" should not be replaced by "the special education programmes implemented".

101. Mr. SIMMA said that there had been a reason for saying "put in place": it was not yet known how such programmes worked in practice.

102. Paragraph 2 was adopted.

Paragraphs 3-4

103. Paragraphs 3-4 were adopted.

Paragraph 5

104. Mrs. BONOAN-DANDAN said that paragraph 5 had no heading, and as it dealt with principal subjects of concern, i.e. the subject of paragraph 4, it should be included in that paragraph, and the reference to paragraph 5 should be deleted.

105. Mr. MARCHAN ROMERO objected to the reference to educational rights, which introduced a new category. Clearly, educational rights were included in cultural rights. He therefore proposed deleting the words "educational and".

106. The CHAIRMAN said that that was a difficult issue. It was often assumed that the Covenant could be divided into a section on economic rights (arts. 6 to 9), social rights (arts. 10 to 12) and cultural rights (arts. 13 to 15). Such a division was questionable. In his view, education was very much an economic right in the sense that it was costly to implement and it was vital to the economic well-being of the individual. It was a social right in that one could not participate fully in society without it. The reason for using the term "education" was simply to refer to articles 13 and 14 of the Covenant. He noted that UNESCO also spoke of educational rights.

107. Mr. SIMMA proposed the following wording for the phrase in question: "the need to ensure that special attention is paid to the right to education and culture of the most vulnerable and disadvantaged members of Hungarian society". That would take Mr. Marchan Romero's comment into account.

108. Paragraph 5, as amended, was adopted.

109. Document E/C.12/1992/WP.19, as amended was adopted.

E/C.12/1992/WP.14

110. Mr. NENEMAN said that he had doubts about the logical format of the entire text. In paragraph 4, it was stated that the Committee's main concern was the right to housing, a rather sweeping statement. Clearly, the Committee also focused on other matters. While that would be easy to correct, the overall imbalance of the working paper created a more serious problem: the text had only eight paragraphs, yet a total of five dealt with housing.

111. The CHAIRMAN said that it was for the Committee to decide what course it wished to follow, but in his opinion the text was seeking to reflect the fact that the great majority of questions put had related to housing. He accepted Mr. Nenemans's point that the first sentence in paragraph 4 needed to be redrafted. It might read "In the consideration of the report the Committee devoted particular attention to the right to housing".

112. Mr. KONATE said that he had the same misgivings as Mr. Neneman. The Committee should move paragraphs 5 to 8 from its concluding observations to the part reflecting the general discussion. That would be both more logical and more in conformity with the Committee's usual procedure.

113. The CHAIRMAN noted that in the case of Italy's report there had been a more sustained focus than usual on one particular issue, which had enabled the Committee to enter into greater detail and to draw conclusions.

114. Mr. SIMMA said that he was in favour of retaining the text as it stood. Paragraphs 5 to 8 should be kept where they were but should be given a proper introduction. A phrase such as "The Committee notes with concern that" could be used to provide a compromise solution. So far the Committee's shortcoming in dealing with concluding observations had been the lack of specific remarks regarding points which the Committee had not found satisfactory. The Committee needed to move away from polite comments like "It is gratified by the high level of the delegation", which should be omitted in future. In the case under consideration, since the debate with the delegation of Italy, especially the latter part of it, had focused on housing, that should be reflected but in the form of a concern expressed by the Committee.

115. Mr. TEXIER said that, as the author of the original text, he quite understood Mr. Konate's point of view. However, if the discussion with the State party had mainly related to a topic of particular concern to the Committee, that point should be specifically stressed. He had accordingly mentioned a number of concrete points in the concluding observations. He ought, perhaps, to have combined the paragraphs in question into a single paragraph.

116. The CHAIRMAN observed that what Mr. Texier had stated was in line with what all the other treaty bodies were now trying to do. Mr. Konate was validly concerned about the fact that the Committee was changing its rules as it went along. The Committee was in fact moving inevitably away from vagueness towards greater specificity. That change would also be helpful to States parties, which would undoubtedly understand that the Committee's rules were in a transitional stage and that meanwhile the vulnerable and disadvantaged would be protected.

117. Mr. NENEMAN said that the case under consideration was different from all the others because Italy's report was comprehensive and covered all articles of the Covenant. More comprehensive concluding observations were therefore needed. In the text before the Committee the observations on housing were very well put. The parts of comprehensive reports dealing with such issues as education and culture were also important. For example, the defects in the system of secondary education in Italy were probably as important as the

housing problems, but in the case of a comprehensive report it might not be possible to cover all issues in a short text.

118. The CHAIRMAN suggested that the Committee might wish to combine the paragraphs in question into a single paragraph preceded by the words "The Committee notes with concern ... ".

119. Mr. KONATE stressed that paragraphs 5 to 8 reflected the discussion between the Committee and the delegation of Italy and should be placed in the general descriptive part and not in the concluding observations. Either a single paragraph reflecting the Committee's concerns could be placed after paragraph 4 or all the paragraphs in question could be moved to the general descriptive part.

120. The CHAIRMAN said that he quite understood Mr. Konate's concern but wondered whether the solution would not be to combine the paragraphs and introduce the new combined paragraph with the words "the Committee wishes to draw the attention of the State party to a number of specific concerns resulting from the dialogue with its representatives. These concerns included the fact that ...," followed by the existing text largely as it stood. That compromise would meet both the desire to reflect the specific issues in the concluding observations and the need not to list them as if they were facts.

121. Mr. KONATE noted that it was the first time that the Committee was adopting such a procedure. It could presumably be followed in respect of all other reports. However, in order not to hold up the proceedings, he would not insist on maintaining his position.

122. The CHAIRMAN thanked Mr. Konate and inquired whether the Committee accepted the compromise solution which he himself had suggested.

123. It was so agreed.

Paragraph 1

124. Paragraph 1 was adopted.

Paragraph 2

125. Mr. KONATE said that he would like to know Mr. Texier's opinion concerning the use of the word "rapide" in the first sentence of the original French text. "Bref" or "succinct" would perhaps be better.

126. Mr. TEXIER replied that he had no objection to the use of "bref"

127. Mrs. BONOAN-DANDAN observed that "brief" was different from "sketchy".

128. The CHAIRMAN said that the use of the word "sketchy" in the English text was fine, so the English text required no change.

129. Mr. SIMMA noted that in the last sentence it was stated that the report "does not even mention article 11". It would be better to say that the report "does not cover at all the rights contained in article 11".

130. Paragraph 2, as amended, was adopted.

Paragraph 3

131. Mr. SPARSIS recalled that he had stated that privatization entailed risks not only for wage-earners but also for the standard of living, social security, education, housing and health and that he had been supported by Mr. Wimer Zambrano and others in that view. Consequently, the paragraph as formulated at present was not sufficient to reflect the Committee's concern that privatization might adversely affect all human rights set forth in the Covenant.

132. The CHAIRMAN suggested that the words "and all other members of society" should be added after the word "wage-earners".

133. Mr. SPARSIS said that it was important for the Committee to indicate clearly that privatization was a potential threat to all human rights, some of which he had already enumerated.

134. Mr. TEXIER suggested a broader formulation reading "However, the policy of privatization and the abolition of the so-called 'sliding scale' system entail certain risks for the social protection of large sectors of the population" would meet that point.

135. Mrs. JIMENEZ BUTRAGUEÑO suggested that the paragraph should begin with the words "The Committee notes the substantial efforts being made by the Italian Government ...".

136. Mr. MRATCHKOV suggested that it would be better to divide paragraph 3 into two paragraphs, placing the first three sentences in the first of them and making a new separate paragraph for the last sentence, thereby enhancing its importance.

137. Paragraph 3, as amended, was adopted.

Paragraph 4

138. The CHAIRMAN recalled the amendment which he had proposed in response to Mr. Neneman's general comment on the concluding observations. If there was no objection, he would take it that his amendment was acceptable.

139. It was so agreed.

140. Mrs. JIMENEZ BUTRAGUEÑO said that she would prefer to use the word "inquilino" instead of "arrendatario" in the Spanish text.

141. Paragraph 4, as amended, was adopted.

Paragraph 5

142. Mr. SIMMA asked what was meant by "their increase" in the last line.

143. The CHAIRMAN suggested that the word "their" be replaced by the word "rental", which was what was meant.

144. Paragraph 5, as amended, was adopted.

Paragraphs 6-8

145. Paragraphs 6-8 were adopted.

Paragraph 9

146. Mr. MARCHAN ROMERO said that he would prefer to omit the reference to the importance which the Committee attached to the right to housing, since it was self-evident. It would be more appropriate for the Committee to reiterate the importance which it attached to the right to housing.

147. Mr. WIMER ZAMBRANO agreed with the previous speaker.

148. Mr. MRATCHKOV also agreed with Mr. Marchan Romero. He suggested that the words "The Committee wishes to point out the importance which the Covenant attaches to the right to housing and recommends that ..." should be used.

149. Paragraph 9, as amended, was adopted.

150. Document E/C.12/1992/WP.14, as amended, was adopted.

The meeting rose at 12.55 p.m.